



Dan Bucks  
Director

# Montana Department of Revenue

EXHIBIT

DATE

SB



Brian Schweitzer  
Governor

To: Members of the Senate Taxation Committee

From: Dan Bucks, Director of Revenue *Dan Bucks*

Subject: Constitutional Convention Intent Regarding Tax Appeals

As discussed at the public hearing on SB 406, attached is the Constitutional Convention transcript (page 1490) concerning the tax appeal procedures explaining the intent underlying the current tax appeals provision in the Montana Constitution, Article VIII, Section 7. It is clear from the convention transcript that convention delegates intended that the legislature to create a "body" to handle tax appeals and that body was to be separate and independent of the tax agency or the courts. Here is the key quote from the convention transcript recommending the final adopted appeals provision:

The committee feels that the Montana taxpayer needs **some avenue of recourse, besides the tax administrators or courts**, to evaluate his tax treatment. We feel this proposed section will enable the Legislature to set up the proper machinery at a local level and **give the taxpayer an independent body to which he can appeal**. (Emphasis added.)

It is significant that the Legislature following the adoption of the Constitution created the State Tax Appeals Board to implement Article VIII, Section 7, providing evidence of the contemporaneous understanding of the constitutional intent.

It would appear that SB 406 run counter to this intent because it bypasses the State Tax Appeal Board—an "independent body" separate from the Department and the Courts—and places decision-making in the appeals process back with the Department of Revenue, in a mandatory mediation procedure, and with the courts.

Garlington ..... Aye  
 Graybill ..... Aye  
 Gysler ..... Aye  
 Habedank ..... Aye  
 Hanson, R.S. .... Aye  
 Hanson, R. .... Aye  
 Harbaugh ..... Aye  
 Harlow ..... Aye  
 Harper ..... Aye  
 Harrington ..... Aye  
 Heliker ..... Aye  
 Holland ..... Excused  
 Jacobsen ..... Aye  
 James ..... Aye  
 Johnson ..... Nay  
 Joyce ..... Aye  
 Kamhoot ..... Nay  
 Kelleher ..... Aye  
 Leuthold ..... Aye  
 Loendorf ..... Aye  
 Lorello ..... Aye  
 Mahoney ..... Nay  
 Mansfield ..... Nay  
 Martin ..... Aye  
 McCarvel ..... Aye  
 McDonough ..... Aye  
 McKeon ..... Aye  
 McNeil ..... Aye  
 Melvin ..... Aye  
 Monroe ..... Aye  
 Murray ..... Aye  
 Noble ..... Aye  
 Nutting ..... Nay  
 Payne ..... Aye  
 Pemberton ..... Aye  
 Rebal ..... Aye  
 Reichert ..... Aye  
 Robinson ..... Aye  
 Roeder ..... Aye  
 Rollins ..... Aye  
 Romney ..... Aye  
 Rygg ..... Aye  
 Scanlin ..... Absent  
 Schiltz ..... Aye  
 Siderius ..... Aye  
 Simon ..... Nay  
 Skari ..... Aye  
 Sparks ..... Aye  
 Speer ..... Aye  
 Studer ..... Nay  
 Sullivan ..... Aye  
 Swanberg ..... Nay  
 Toole ..... Aye  
 Van Buskirk ..... Aye  
 Vermillion ..... Aye

Wagner ..... Aye  
 Ward ..... Aye  
 Warden ..... Aye  
 Wilson ..... Nay  
 Woodmansey ..... Aye

**CLERK SMITH:** Mr. Chairman, 76 voting Aye, 14 voting No.

**CHAIRMAN GRAYBILL:** 76 having voted Aye and 14 having voted No, Section 6, as amended, of the committee proposal is adopted. Will the clerk please read Section 7 in its entirety. Just a moment.

Mrs. Van Buskirk, for what purpose do you rise?

**DELEGATE VANBUSKIRK:** Mr. Chairman. I'd like to express my feelings that I feel real proud of this group, that we're representing Montana.

**CHAIRMAN GRAYBILL:** Very well. All right, now the clerk will read Section 7.

Mr. Rygg.

**DELEGATE RYGG:** Mr. Chairman, I wonder if it would speed up anything. I'm going to move to amend Section 7 by deleting it in its entirety and to supply the material which is on your desk. Now, I don't know if he still must read it or not, but I do plan to move to amend it by deleting it in its entirety and substituting the short amendment, which should be on your desks.

**CHAIRMAN GRAYBILL:** Mr. Rygg, the Chair and the clerk did not receive your material—or at least the Chair didn't. Very well, may I have your attention? The Chair will ask if there's any objection if we do not read Section 7 of the committee report and allow the amendment without reading that page and a half of material. Is there anyone [who] objects? Very well. Hearing no objection, Mr. Rygg, may the Chair direct the clerk to read your amendment to Section 7?

**DELEGATE RYGG:** Do, sir.

**CHAIRMAN GRAYBILL:** Very well. Please read the amendment.

**CLERK SMITH:** "Mr. Chairman. I move to amend Section 7 of the Revenue and Finance Committee majority report, starting on line 17 of page 12 through and including line 3 on page 14, by deleting the material contained therein and inserting in lieu thereof the following new material: 'Sec-

tion 7. Tax appeals. The Legislature shall provide taxpayer independent appeal procedures for appraisals, assessments and equalization grievances and tax grievances. The Legislature shall include therein a review procedure at the county or local governmental unit level.' Signed: Rygg."

**CHAIRMAN GRAYBILL:** Mr. Rygg.

**DELEGATE RYGG:** Mr. Chairman. I suppose all you committees probably had the same trouble we did in meeting our deadline. And about 11 o'clock one night, we were still wrestling with this section. We did have quite an involved section. At the time, there were some of us on the committee who felt that perhaps this was too involved and really too much of a legislative article to be contained in the Constitution. However, because of the lateness of the hour and the nearness of the deadline, we did feel that we had to submit it. Since then, we have met on several occasions and discussed this particular section. We are not changing our concept at all, because we think that this concept of establishing independent tax review is something that is needed. Under the present tax administration program, the same governmental bodies—that is, the County Boards of Equalization and the State Boards of Equalization—that establish the revenue policies and procedures then also sit in judgment when a person wants to appeal the implementation of these policies and procedures. The testimony heard during the past few weeks indicates this procedure does not guarantee an independent, nonpartial, objective review of tax decisions. The committee feels that the Montana taxpayer needs some avenue of recourse, besides the tax administrators or the courts, to evaluate his tax treatment. We feel this new proposed section will enable the Legislature to set up the proper machinery at a local level and give the taxpayer an independent body to which he can appeal. Again I say, we thought we had spelled it out in too much detail. We had to provide for five; maybe they don't need that many. We are very interested in having it on the local level. And we feel that the Legislature is the only one that can do this. Now, it is the thinking—and I would say that Mr. Wagner and Mr. McDonough have been instrumental in working on this particular section. It is their feeling that the—this board or person or whatever the unit is who is going to appeal this would have the right to go through the records, naturally, to establish what had been done and what hadn't been done, so that they would have the authority any other person does, at

any rate, to see all the records. And that they could do this. So we strongly feel that the taxpayer has the right to this independent tax review procedure. So again I reiterate, we have in no way changed our concept. We just feel that we were too legislative in our former Section 7, and now we recommend this shortened plan to this group. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Is there debate or discussion on the committee's proposed Section 7—amended Section 7? If not, members of the committee, you have before you for your consideration, upon the motion of Mr. Rygg, the Chairman of the committee, that when this committee does arise and report, after having had under consideration the amendment they propose to Section 7 of the majority report, that this body recommend that the same be adopted. So many as shall be in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.  
(No response)

**CHAIRMAN GRAYBILL:** Section 7 is amended as adopted. Will the clerk please read Section 8.

**CLERK SMITH:** "Section 8. State indebtedness. No state debt shall be created unless authorized by three-fifths vote of the members of both houses of the Legislative Assembly. State debts cannot be created to over—to cover deficits incurred when appropriations exceed anticipated revenue during any budget period." Section 8, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Rygg.

**DELEGATE RYGG:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Rygg.

**DELEGATE RYGG:** Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 8 of Proposal Number 7, it recommend the same be adopted.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Rygg.

**DELEGATE RYGG:** The present Constitution restricts the state to a hundred thousand dollar debt limit. Dollar limits do not reflect inflation, so the committee felt the limit should not be